IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.617 OF 2005

M/s.B.M.Fabricators & Engineers. ..Petitioner.

Vs.

The Liquidator,

The Indira Sahakari Bank Ltd. & Ors...Respondents.

....

Mr.M.M.Khokhawala for the Petitioner.

Mr.Milind More Respondent No.1.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

14th March, 2005.

P.C. :

1. The Co-operative Appellate Court while allowing an appeal against the dismissal of a recovery dispute passed an order for the recovery of an amount of Rs.49,94,546.05 together with simple interest at the rate of 22% per annum in respect of Dispute 16 of 1993.

2. It would be material to advert to issues 3, 4 and 6 which were framed by the Co-operative Court

and to the findings that were arrived at thereon :

"3. Whether the opponent No.1 proves that on the representation allegedly made by the Bank he had signed the blank documents? Negative.

4. Whether the opponent No.1 proves that the Disputant bank at any time assured the Opponent to grant additional facility to run the business with the additional securities and that he had signed the blank forms as required by the Bank? Negative.

6. Whether the opponent No.1 proves that the Bank had debited various amounts in his/their account/s and the said amounts have neither been received by

nor paid by the bank? Negative."

Notwithstanding the aforesaid findings, the Co-operative Court held that the bank had not discharged the "*heavy burden*" to show that the loan had been granted and that it had been renewed subsequently. The Co-operative Court held that it was incumbent upon the bank to produce documents since there was no specific admission in the written statement.

3. In the appellate order the Co-operative Appellate Court has inter alia noted the findings of the trial Court on issues 3, 4 and 5 and to the fact that these findings were not challenged by filing a cross objection in the appeal. That apart, the Co-operative Appellate Court has duly considered the evidence on the record including the admission of liability in the balance sheet. Upon considering the evidence, the Appellate Court inter alia found thus :

"Moreover, bank’s witness in cross examination on 20.1.95 has stated the amount shown in balance sheet Exh.70 tallies to amount shown

in statement of account. Witness Bala Giri in his statement dt.1.3.95 in examination-in-chief, he produced the Xerox copy of statement obtained from bank and in cross examination he admits the statement of account at Exh.OP-2 produced by him is upto 30.6.93, while statement of account annexed to the dispute is upto 30.8.92. Thus entries in the account book are supported by Xerox copy of pass book of the opponent No.1 firm Krishna Weld Roads and there is admission, entries in the pass book and statement of account are correct. It indicates, opponents have knowledge of debit entries in the account which are certainly given in passbook with them."

4. In the appeal which arose out of Dispute 16 of 1993 the Appellate Court has discussed the evidence in paragraph 20 of its judgment and held that the claim of the Bank was sustainable and valid.

5. This Court is exercising jurisdiction of a supervisory nature under Article 226 of the

Constitution. The Court would not be justified in reviewing what are essentially findings of fact by the Courts below. The Co-operative Appellate Court has appreciated the evidence and has found that amounts are due and outstanding in respect of the credit facility which was extended by the bank. The interference of the Court in regard to the findings of fact on the merits of the case is not warranted. However, the Appellate Court has awarded simple interest at the rate of 22% per annum on the principal sum. In my view, it would be appropriate and proper to modify the rate of interest which was awarded and to direct that the amount which is due and outstanding shall bear interest at the rate of 14% per annum from the date of the institution of the proceedings in the Co-operative Court till payment or realisation. Save and except for this modification, the Petition shall stand rejected.

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